

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTEENTH REGION

Sallisaw, Oklahoma

BORG WARNER (MORSE TEC, INC.) 1/

Employer

and

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS INTERNATIONAL UNION (UAW)

Petitioner

Case 17-RC-12183

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 3/

All full-time and regular part-time production and maintenance employees employed by the Employer at its Sallisaw, Oklahoma facility, excluding all other employees, office clerical employees, managers, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS  
INTERNATIONAL UNION (UAW)

**LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 8600 Farley Street - Suite 100, Overland Park, Kansas 66212-4677 on or before **May 28, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **June 4, 2003**.

Dated May 21, 2003

at Overland Park, Kansas

/s/ D. Michael McConnell  
Acting Regional Director, Region 17

- 1/ The Employer's name appears as amended at the hearing.
- 2/ The Employer, a corporation with an office and place of business in Sallisaw, Oklahoma, is engaged in the business of manufacturing air pumps and other related products. During the previous 12 months, a representative period of time, the Employer, in the course and conduct of its operations described above, sold and shipped goods valued in excess of \$50,000 directly to points located outside the State of Oklahoma.
- 3/ In its petition, as amended at the hearing, the Petitioner requests a unit of the following employees: All full-time and regular part-time production and maintenance employees employed by the Employer at its Sallisaw, Oklahoma facility, excluding all other employees, office clerical employees, managers, guards and supervisors as defined in the Act.

### ISSUE

The only issue is whether the Employer's team leaders are supervisors within the meaning of Section 2(11) of the Act. The Petitioner contends that team leaders are not supervisors and, along with the remaining production and maintenance employees, constitute an appropriate unit for collective bargaining. The Employer, on the other hand, contends that its team leaders are supervisors who must be excluded from the unit. As discussed below, I find that the Employer has failed to establish that team leaders are statutory supervisors. Accordingly, I will direct an election in the petitioned-for unit, which includes approximately 170 employees.

### BACKGROUND

The Employer manufactures oil, air, and transfer case pumps for customers including BMW, Ford, and Chrysler. Manufacturing Manager Gary March heads the Employer's Manufacturing Department. Platform Managers LaRue Logue and Mila Petree report directly to Manufacturing Manager March and supervise oil and air pump production.

In 1994, the Employer implemented self-directed work teams. In accordance with the Employer's self-directed team philosophy, the Employer's Manufacturing Department is subdivided into approximately 12 teams or departments, which range from 4 to 23 employees. Each team is structured around a particular product line. As Platform Manager LaRue Logue testified, teams manage their departments as exclusive businesses and are responsible for the quality of the products that they manufacture. The teams meet a minimum of three times every week to discuss production and productivity issues. Team members are expected to be proficient in operating all of the equipment in their department, as they frequently rotate tasks.

The Employer employs two facilitators, who assist and coach the manufacturing teams. The facilitators, who formerly were supervisors under the Employer's previous managerial structure, report directly to the platform managers. As part of its decentralization process, the Employer has reduced the number of facilitators from approximately 10 in 1994 to the current level of 2. The parties stipulated, and I find, that the facilitators exercise supervisory authority and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I will exclude the facilitators from the unit found appropriate.

#### TEAM LEADERS

As stated above, the parties' disagreement centers upon whether team leaders are supervisors. The Employer employs approximately 16 team leaders, who are spread throughout at least 9 of the Employer's manufacturing groups. Team leaders facilitate group interaction and decision making among team members, manage production schedules, lead team meetings, track employees' hours, and generally ensure that their groups meet production requirements.

#### LEGAL STANDARD

In defining the term "employee," Section 2(3) of the Act specifically excludes "any individual employed as a supervisor." Section 2(11) of the Act, in turn, defines the term "supervisor" to

include any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. Possession of any one of the indicia specified in Section 2(11) is sufficient to confer supervisory status on an employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine manner. See *Airline Commercial Barge Line Co.*, 337 NLRB No. 168, slip op. at 1 (2002); *Browne of Houston*, 280 NLRB 1222, 1223 (1986). The Board, however, construes supervisory status narrowly “because the employee who is deemed a supervisor is denied the rights which the Act is intended to protect.” See *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1995). It is incumbent upon the Employer, therefore, as the party asserting that team leaders are statutory supervisors, to demonstrate their supervisory status. See *NLRB v. Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1866, 167 LRRM 2164 (2001). Accordingly, any lack of evidence is construed against the Employer. See *Elmhurst Extended Care Facilities*, 329 NLRB 535, 535 fn. 8 (1999).

The Employer maintains that team leaders exercise supervisory authority by utilizing independent judgment to effectively recommend disciplinary action; to assign work and responsibly direct employees; to schedule and adjust hours; to participate in hiring and promotion decisions; to train, evaluate, and reward employees; and to adjust grievances.

Contrary to the Employer, the Petitioner contends that team leaders are not supervisors, as they do not possess authority with respect to any of the statutory indicia of supervisory status. I have addressed the parties’ contentions below.

#### DISCIPLINE

The Employer maintains a formal three-step progressive discipline policy. The record reveals that team leaders do not issue formal discipline to employees.<sup>1</sup> Nevertheless, the Employer contends that team leaders effectively recommend discipline by reporting discipline problems to management. Platform Manager Logue testified that he could not remember any instance in which management did not investigate or otherwise pursue a disciplinary problem that a team leader brought to its attention.

Although team leaders do notify management about deficiencies and conduct issues, team leaders' responsibility is limited to speaking with employees. If a team leader is unable to resolve the problem, he or she notifies a manager, who then becomes involved. There is no specific evidence that team leaders recommend the type or level of discipline that is warranted. On the contrary, it appears that team leaders' responsibility concerning discipline is merely reportorial. See *Willamette Industries*, 336 NLRB No. 59, slip op. at 2 (2001). Even though team leaders first attempt to correct employees' behavior through verbal consultations, such exchanges are not documented in employees' personnel files. There is also no evidence to suggest that a verbal consultation, by itself, results in any adverse employment action. See *Ten Broeck Commons*, 320 NLRB 806, 812 (1996). Accordingly, I do not find that team leaders effectively recommend discipline.

## ASSIGNING AND DIRECTING WORK

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<sup>1</sup> Platform Manager Logue testified that the only team leader who is assigned to the third shift has authority to suspend employees. The record contains no evidence that this has actually occurred. Moreover, upon further testimony, Logue explained the third-shift team leader's authority to suspend as follows: "They're instructed that, if someone does something that would require that, then they're asked to send that person home and come tomorrow to human resources." Such evidence is insufficient to establish that team leaders have independent authority to suspend employees.

The self-directed manufacturing team members rotate positions within their departments according to a predetermined schedule. The teams' work is dictated by production schedules, which are generated by the Employer's materials group. The production schedules translate a particular customer's requirements into daily production standards. Team leaders are responsible for ensuring that his or her team meets its production quota. Platform Manager Logue testified that, as customers' orders change, team leaders are responsible for providing a manager with a plan detailing the team's staffing requirements. Accordingly, team leaders are frequently required to coordinate the temporary transfer of employees from one team to another. On occasion, a downturn in production requires team leaders to recommend to a manager that his or her team not work on a particular day. Conversely, if the team's production falls behind schedule, the team leader is expected to advise a manager that overtime might be required.

It is clear that team leaders are responsible for ensuring that their teams respond to changes in production demands. Nevertheless, there is insufficient evidence that team leaders independently assign work or responsibly direct employees. See *Tree-Free Fiber Co.*, 328 NLRB 389, 392 (1999). Employees' day-to-day assignments are predominately dictated by a predetermined rotation schedule and production quotas. When production requirements necessitate schedule changes, such as sending employees home, team leaders must obtain higher-management approval. Although team leaders have authority to coordinate the temporary transfer of employees, it appears that whether a particular employee will transfer or go home is a routine decision that is left largely to the individual employee. Without more evidence, it is impossible to find that team leaders utilize independent judgment in arranging such transfers. See *Harmon Industries, Inc.*, 226 NLRB 432, 439 (1976). Even though employees are expected to follow team leaders' instructions, as addressed above, team leaders are not empowered to issue discipline. See *Carlisle Engineered Products, Inc.*, 330 NLRB 1359, 1359 fn. 3 (2000).

In short, it appears that team leaders' authority to assign work is circumscribed by the Employer's production schedule, higher management, and the process by which the Employer transfers employees. Accordingly, I do not find that team leaders independently assign work or responsibly direct employees.

#### SCHEDULING WORK/GRANTING TIME OFF

Team leaders maintain floor sheets, which track employees' time, and submit them to the payroll department. When the production schedule dictates, team leaders have authority to ask employees to stagger their breaks or postpone their lunches. Team leaders also have authority to grant time off to employees for purposes such as dentist appointments. Although managers maintain ultimate authority to grant employees' vacation requests, employees submit their requests to team leaders.

Notwithstanding the evidence concerning team leaders' authority to schedule work and grant time off, there is insufficient evidence to demonstrate that they exercise supervisory authority. See, e.g. *Freeman Decorating Co.*, 330 NLRB 1143, 1144 (2000). Team leaders' authority with respect to tracking employees' time is ministerial. Team leaders merely initial the floor sheets to signify how many hours the employees worked. See *Tree-Free Fiber*, 328 NLRB at 393. Team leaders' ability to request that employees move their breaks is also routine and does not evince supervisory authority. See *Azusa Ranch Market*, 321 NLRB 811, 812 (1996).

Although Platform Manager Logue testified conclusionally that team leaders independently grant employees' leave requests, there is no evidence of a team leader actually exercising that authority. The mere inference of independent judgment without specific support in the record is insufficient to establish supervisory status. See *Sears Roebuck & Co.*, 304 NLRB 193, 193 (1991). Additionally, although team leaders do initially grant or deny employees' vacation requests, the record establishes that a team leader would only deny such a request if there were



not enough employees to cover the shift. Such a decision is not indicative of supervisory authority. See *Dico Tire, Inc.*, 330 NLRB 1252, 1253 (2000). In any event, a team leader's decision to grant or deny a vacation request is subject to the approval of higher management. See *Carlisle Engineered Products*, 330 NLRB at 1360.

#### HIRING AND PROMOTION

In selecting new team leaders, the Employer utilizes a series of tests, which evaluate candidates' hand/eye coordination, math and reading skills, and problem solving ability. Candidates are also interviewed by a panel, which includes a human resource representative, a manager, a team leader, and, if the candidate chooses, a fellow employee. Through questions, the panel evaluates candidates' technical competence and leadership abilities and assigns a numerical grade to each answer on score sheets. The score sheets, which do not contain the panelists' names, are then tabulated (apparently by the human resource department) and are utilized in selecting a successful candidate. In addition to participating in the panel interview process, team leaders also have recommended that employees employed through an outside agency on a temporary basis be considered for permanent employment.

The Employer contends that team leaders' participation in panel interviews and their recommendations concerning temporary employees connote supervisory authority. I disagree. Mere participation in the hiring or selection process is insufficient to establish supervisory authority absent evidence of independent judgment. See *North General Hospital*, 314 NLRB 14, 16 (1994). Team leaders' role in the panel interview process is no different from that of a candidate's fellow employee. Although the evaluations are utilized by the Employer to make its final staffing decision, they are not the only factor considered by the Employer. Such a limited role does not demonstrate supervisory authority.

Likewise, although team leaders apparently have recommended that the Employer retain temporary employees, the evidence does not establish that team leaders effectively recommend hiring decisions. Platform Manager Logue testified that team leaders' recommendations carry considerable weight. Nevertheless, upon the recommendation of a team leader, the Employer's human resource department conducts an independent interview to determine whether the employee meets the Employer's criteria and makes the hiring decision. Under such circumstances, I do not find that team leaders exercise supervisory authority.

#### TRAINING, EVALUATING, AND REWARDING

Team leaders train employees to operate machinery and are responsible for initially determining whether employees meet the Employer's requirements. Although the Employer only recently implemented its evaluation process, Platform Manager Logue testified that team leaders support the facilitators and platform managers in evaluating employees. Additionally, team leaders are responsible for rewarding positive behavior. As Platform Manager Logue testified, team leaders take employees to lunch approximately 6 to 8 times per year. Team leaders also reward positive behavior by bringing it to the attention of management.

Notwithstanding the evidence concerning team leaders' role in training, evaluating, and rewarding employees, I do not find that they exercise supervisory authority. The evidence with respect to team leaders' training responsibilities is sparse. Nevertheless, the record is clear that an employee's training is also certified by a trainer, platform manager, human resource representative, and the employee. Without more evidence, it is impossible to determine that team leaders' training responsibilities are supervisory in nature. See *Sears, Roebuck & Co.*, 292 NLRB 753, 754 (1989). Likewise, although team leaders do assist in evaluating team members, their authority is circumscribed by the involvement of higher management. Even assuming that team leaders are primarily responsible for completing the evaluations, there is no evidence from

which to determine whether the evaluations constitute an effective recommendation for a promotion or a reward. See *Arizona Public Service Co.*, 310 NLRB 477, 480 (1993); *Greenpark Care Center*, 231 NLRB 753, 754 (1977). Finally, I do not find that the ability to reward employees by taking them to lunch evinces supervisory authority. In any event, I note that such action is also subject to the approval of higher management.

### ADJUSTING GRIEVANCES

Team leaders routinely meet with employees to discuss operating issues. Platform Manager Logue testified that, if an employee raises a problem or complaint, team leaders are expected to resolve the matter the best that they can without getting management involved.

The Employer contends that team leaders' ability to resolve complaints rises to the level of adjusting grievances within the definition of Section 2(11). There is, however, insufficient evidence to support such a conclusion. It is unclear what steps team leaders take to resolve employees' complaints and under what conditions, if any, they are authorized to speak for the Employer in resolving grievances. See *Dico Tire*, 330 NLRB at 1253. Without specific support in the record, I do not find that team leaders adjust grievances. See *Sears Roebuck*, 304 NLRB at 193.

### SECONDARY INDICIA

The record reveals that team leaders, although hourly employees, receive higher wages than other hourly employees.<sup>2</sup> Additionally, team leaders attend training that is not available to other production and maintenance employees.

Although such evidence is accorded some weight in determining whether team leaders are statutory supervisors, it is not dispositive. See *Chrome Deposit Corp.*, 323 NLRB 961, 963 fn. 9

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<sup>2</sup> Although Platform Manager Logue testified that the pay disparity is substantial, there is no evidence to quantify the actual amount. It is noted, however, that team leaders begin at pay grade 7, whereas most other production and maintenance employees appear to be classified as pay grade 4.

(1997). Absent evidence that team leaders exercise independent authority with respect to any of the statutory indicia of supervisory status, I find that the differences in team leaders' pay and training do not establish that they are supervisors.

## CONCLUSION

As the record fails to establish that team leaders possess authority with respect to any of the statutory indicia of supervisory status, I find that they are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I find that the petitioned-for unit is an appropriate unit for collective bargaining, and I shall direct an election.

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